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February 7, 2003

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FROM: LLOYD W. PELLMAN
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RE: **Calling of Election for Hacienda Heights Incorporation**

The Local Agency Formation Commission for Los Angeles County ("LAFCO") has requested that your Board call elections for the proposed incorporation of the unincorporated community of Hacienda Heights and for city council members for the new city (collectively the "Incorporation Election"). LAFCO has requested that the Incorporation Election be called for June 3, 2003. It is our understanding, however, that requests to postpone the Incorporation Election until the November 4, 2003, election have been made to your offices.

The purpose of this memorandum is to provide you with the parameters of your legal obligations with respect to the calling of elections for local agency changes of organization or reorganizations. Generally speaking, there is no legal impediment to fixing November 4, 2003, as the date for the Incorporation Election, if that election is called within the time frame provided for in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the "Act").

LAFCO Proceedings

With respect to a proposal for incorporation, the Act provides that a local agency formation commission ("commission") must adopt a resolution making determinations approving or disapproving the proposal, with or without conditions. (Cal. Gov. Code § 56880) The resolution making determinations is

subject to a 30-day reconsideration period wherein interested parties may file written requests for the commission to reconsider its decision. (Cal. Gov. Code § 56895) Once all valid requests for reconsideration have been considered and acted upon, the commission's resolution making determinations becomes final. (Cal. Gov. Code § 56895(h)) The commission, acting as the conducting authority, must then hold a protest hearing on the proposed incorporation. (Cal. Gov. Code §§ 57100, 57050) The commission must terminate proceedings if a majority of registered voters file written protests. (Cal. Gov. Code § 57078) If no majority protest exists, the commission must adopt a resolution ordering the incorporation subject to confirmation of the voters and request that the board of supervisors direct the elections official to conduct the election. (Cal. Gov. Code §§ 57078, 57100, 57115, 57116 and 57118)

On December 11, 2002, LAFCO adopted a resolution making determinations, approving the incorporation of the City of Hacienda Heights (the "Resolution Making Determinations"). The Resolution Making Determinations contemplates concurrent elections on the question of incorporation and for the election of city officers. It sets as the effective date for the new city, the August 1st immediately following the election date, should the proposal be approved by the voters. It does not set an election date, but rather, references the provision of the Act which provides when the election is to be held, as discussed below. (Cal. Gov. Code § 57132)

During the 30-day reconsideration period following LAFCO's adoption of the Resolution Making Determinations, LAFCO did not receive any requests for reconsideration. Upon expiration of the reconsideration period, without any request being made, the Resolution Making Determinations became final.

On January 22, 2003, LAFCO held a protest hearing on the proposed incorporation. LAFCO received one written protest to the proposed incorporation. Upon the conclusion of the protest hearing, LAFCO adopted a resolution ordering the incorporation subject to confirmation of the voters (the "Order of Incorporation"). The Order of Incorporation sets forth the ballot language for the proposed incorporation and requests that the Board of Supervisors set the Incorporation Election for June 3, 2003. On January 31, 2003, the LAFCO Executive Officer transmitted to your Executive Office a letter requesting that your Board's consideration of the election date be placed on the February 11, 2003 agenda.

Procedure for Calling Election

When a commission makes a determination regarding a local agency change of organization or reorganization that requires an election it cannot call the election itself, but must request that either the board of supervisors or the city council of the affected city call the election and direct the elections official to conduct the election. (Cal. Gov. Code § 57100(d)) Upon receiving the commission's request, the Act provides that, the board or council: (1) call, provide for and give notice of the election; (2) *fix the date for the election*; (3) designate precincts and polling places; and (4) take any other action necessary to call provide for and give notice of the elections and to provide for the conduct and canvass of returns. (Cal. Gov. Code § 57100(e))

The Act requires that elections on changes of organization or reorganization (with the exception of special reorganizations) be called and held on the next regular election date occurring at least 88 days after the date upon which the resolution calling the election was adopted. (Cal. Gov. Code § 57132) The Elections Code establishes the following "regular" election dates:

- (a) The second Tuesday of April in each even-numbered year;
- (b) The first Tuesday after the first Monday in March of each odd-numbered year;
- (c) The first Tuesday in March in each even-numbered year;
- (d) *The first Tuesday after the first Monday in June of each odd-numbered year; and*
- (e) *The first Tuesday after the first Monday in November of each year.*

(Cal. Elec. Code § 1000 (emphasis added)) Thus, in the case of Hacienda Heights, if your Board called the election before March 7, 2003, the Incorporation Election must be held on June 3, 2003, and if your Board called the election after March 7, but before August 8, 2003, the Incorporation Election must be held on November 4, 2003.

consideration when determining the date on which the Incorporation Election should be called. Pursuant to the Elections Code, a candidate's nomination papers must be filed with the elections official not earlier than the 113th day nor later than the 88th day before the election. (Cal. Elec. Code §§ 10220-10223) The candidate filing period does not commence until the election is actually called. To provide the maximum filing period, the Incorporation Election should be called by February 11, 2003, if the election is to be held on June 3, 2003, or by July 8, 2003, if the election is to be held on November 4, 2003. This would provide the candidates with the maximum period of time for filing their nomination papers, and the Registrar-Recorder with the maximum period of time for receiving and processing the nomination papers.

The Act does not specify a period of time within which a board of supervisors is required to call an election after it receives a request from the commission for an election to be called. The Act does, however, prohibit an effective date for a change of organization or reorganization to be set later than nine months after the date of the election. (Cal. Gov. Code § 57202) LAFCO has set the effective date for this incorporation as the August 1st following the Incorporation Election. Both the June and November regular election dates are within nine months of the effective date set by LAFCO. Holding the Incorporation Election in June, 2003, will result in an effective date of August 1, 2003, whereas, holding the Incorporation Election in November, 2003, will result in an effective date of August 1, 2004. This potential one-year delay in the incorporation's effective date would not affect the legal validity of LAFCO's approval of the incorporation.

The Act also provides that a proceeding for a change of organization or reorganization shall be deemed abandoned if a certificate of completion has not been filed within one year after the commission approves the proposal, unless prior to the expiration of that year the commission authorizes an extension of time for the completion. (Cal. Gov. Code § 57001) It does not appear that a November election would prevent the certificate of completion from being filed before December 11, 2003. If it would, a short extension of time could be requested from LAFCO.

Based upon the above, the Act does not prohibit your Board from fixing the Incorporation Election for the November 4, 2003, election, so long as your Board postpones adopting the resolution calling the election until after March 7, 2003. Adopting the resolution calling the Incorporation Election *on or before* March 7, 2003, will *require* setting the Incorporation Election for June 3, 2003.

Conclusion

Under the Act, when LAFCO requests that your Board call an election, your Board has a statutory duty to adopt a resolution calling and providing for the election. Your Board is authorized to fix the date of an election; however, the election must be held on the next regular election date at least 88 days after the date upon which the resolution calling the election is adopted.

For the proposed incorporation of Hacienda Heights, if your Board adopts a resolution calling the Incorporation Election on or before March 7, 2003, the election must be held on June 3, 2003, the next regular election date. If your Board adopts a resolution calling the Incorporation Election after March 7, 2003, but before August 8, 2003, the election must be held on November 4, 2003.

In order to provide the maximum period of time for the filing of candidate nomination papers, the election should be called no later than February 11, 2003, for the June election, or July 8, 2003, for the November election.

There are no statutory requirements as to when the Board must call the election, except that the effective date of the incorporation cannot be more than nine months from the date of the election and the proceedings are deemed abandoned if not completed within one year of LAFCO's approval of the change of organization or reorganization, without an extension of time from LAFCO for completion of proceedings.

The Board could continue its consideration of the resolution calling the Incorporation Election to a date that would require the Incorporation Election to be held on November 4, 2003. If the Incorporation Election was held in November, 2003, and the voters approved the incorporation, the effective date of the new city would be delayed until August 1, 2004, pursuant to the terms and conditions of the proposal approved by LAFCO.

If you have any questions concerning this matter, please contact me, Assistant County Counsel John Krattli at 974-1838, or Senior Deputy County Counsel Thomas Faughnan at 974-1823.

LWP:TJF:jn

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors